

Amesbury Municipal Council Minutes  
7:00 PM, Tuesday, April 14, 2009  
Town Hall Auditorium

Call to Order 7:00PM

Pledge of Allegiance – Councilor McMilleon

Roll Call: Joseph McMilleon, Allen Neale, Jonathan Sherwood, Mary Chatigny, Stephen Dunford, Anne Ferguson, Robert Gilday, Roger Benson

Robert Lavoie arriving late

Act on Minutes – February 10, 2009, March 10, 2009

Councilor Dunford motioned to accept, Councilor Neale second.

Voted – Unanimous

**2009-012** Joint Meeting with the Planning Board

Call to Order

Planning Board Roll Call: Curtis Wollitz, James Kelcourse, John MacDonald, Ara Sanentz

Ann Hebert, 15 Riverview Heights – Ms. Hebert states she heard about a vacancy on the Planning Board by Grif Dalton. As a result of her research for street acceptances at Merrimac Landing she attended many Planning Board meetings and has learned a lot about the board and as a result decided to apply for the position. She felt it would be a good opportunity to get involved in the community.

Councilor Sherwood asked Ms. Hebert what she learned while observing at the Planning Board meeting. Ms. Hebert states she has great deal of respect for the Planning Board members and has witnessed a great deal of patience. She has seen how multi faceted their roll is and how closely they work with other departments.

Lars Johannessen, 6 Kendrick's Court – Mr. Johannessen states he has served on Design Review until 2008. He has a lot of skills in reading drawings and interpreting what the projects entail. He also spent 21 years on the Historic Commission in town as their Representative. He has enjoyed serving the town and would like to serve the town again because he feels he has plenty to offer.

James Thivierge, 106 Friend Street – Mr. Thivierge has worked with the Merrimac Valley Planning Commission, has done a lot of work with GIS in its conceptual stages and helped to create the planning position. He believes the Planning Board deals with the health, safety and welfare of this community and also the environmental welfare. One of their primary considerations is land values. He is familiar with 40A, 40Q, smart growth and our zoning by-laws.

Councilor Chatigny nominated Ann Hebert, Councilor McMilleon second.

Councilor Ferguson nominated Lars Johannessen, Councilor Sherwood second.

Councilor Wollitz nominated James Thivierge, Councilor Ferguson second.

Roll Call Vote

Ann Hebert – 10 Yes (McMilleon, Neale, Chatigny, Dunford, Gilday, Benson, Wollitz, Kelcourse, MacDonald, Sanentz)

Lars Johannessen - 2 Yes (Ferguson, Sherwood)

Planning Board meeting adjourned

**Licenses and Permits**

**2009-032 Common Victualler License – Pleasant Valley Marina LLC d/b/a Rick's Riverfront Café, 14 Pleasant Valley Rd.**

Jonathan Finkelstein, one of the principal owners states they will be using the same format as before when it was Captain's Galley with breakfast, lunch and the occasional private dinner. It will be seasonal May through September.

Councilor Ferguson motioned to approve 2009-032 as submitted, Councilor Neale second.

Voted – 8 Yes

**Public Comment**

Councilor Neale – report on the Audit Committee. Councilor Neale states the Audit Committee met with Melanson & Heath and Mike Basque to review the audit. They found some small insignificant issues which were; to accelerate reimbursement requests for chapter 90 funds, to improve control over the CDBG disbursements and to establish FDC red flag security documentation. The auditors really struggled to find much wrong and had to make no adjustments to the books. The town is in great shape in the way the financial data is managed.

James Thivierge, 106 Friend Street – Mr. Thivierge read the audit and believes it is a marked improvement from previous years audits. He states there is still work to be done with the reconciliation between general government and schools. Policies need to be developed.

Jane Snow, 44 Fern Ave. – Ms. Snow wants to know if the car that was used by Rick Spinelli in the Department of Public Works was given to the Police Department. If it was, was there a cost to outfit it as a police vehicle. Ms. Snow stated she has called the Newburyport Health Department five times to reach Jack Morris and he is never there. A wide variety of people answer the phone and no one ever asked her if she needs help or if it is an emergency. She wants to know if the town is going to accept a donation to reinstate the Health Nurse. She wants the town to be very careful controlling costs when outsourcing.

Mario Pinierio, 4 Gardner Street – Mr. Pinierio is requesting the Mayor and Department Heads to come up with a budget that is 5% lower than last years budget.

**Council Response to Public Comment**

Councilor Ferguson responded to Ms. Snows comment about outsourcing. She states she has been a nurse for over 30 years and over that time there have been huge changes in health care. You just can not continue to do things the way they used to be done. There has to be cost savings and outsourcing is a way of doing that. It is different but it is not always worse. People need to be open minded about outsourcing the vans and the Health Department. Everyone needs to be willing to give it a try and see how it works out.

Councilor Neale explained GASBE 45. He states it relates to benefits the town has to pay employees post retirement. In most towns you pay as you go. In the public sector those types of costs are amortized over time. So the day the employment ends there is money set aside to pay the retirees. GASBE45 has to be fully funded by 2022. Amesbury is in a better position than most towns with respect to the unfunded portion of those benefits. It is a problem for virtually every community in Massachusetts and will mean additional expenses on the tax levies going forward but its nothing we can do much about. The law is quite clear. The town will hire an Actuarial to figure out what the town's contribution must be.

Councilor Dunford commented on the pension fund. He states, the state took control of the town's pension fund about 18 months ago because it was not doing as well as the state was. The state was putting their money into much riskier bonds which the city was not allowed to do. Last October the pension fund took a huge hit when the stock market went from 14,000 down to 6,000. He believes the town should have control back and urges everyone to contact their state representatives and senators.

### **Mayoral Appointments**

**2009-037** Jim Chapman – Conservation Commission – unexpired term to expire 6/30/11

Mr. Chapman was unable to attend meeting.

Councilor Ferguson motioned to approve 2009-037 despite his absents, Councilor McMilleon second.  
Voted – 8 Yes, 1 not present (Lavoie)

**2009-038** Joyce O'Connell – Historical Commission – term to expire 6/30/12

Ms. O'Connell stated she moved to town 10 ½ years ago and has been restoring a very old house since then. In doing so led her to wanting to become a part of the Historical Committee and give back to the town.

Councilor Ferguson motioned to approve 2009-038 as submitted, Councilor Dunford second.  
Voted – 8 Yes, 1 not present (Lavoie)

**2009-036** William Croteau – Board of Registrars – reappointment term 4/1/09 – 3/31/12

Councilor Neal motioned to approve 2009-036 as submitted, Councilor Ferguson second.  
Voted – 8 Yes, 1 not present (Lavoie)

### **Council Appointments**

**2009-033** Craig Berard – Traffic & Transportation term to expire 4/14/12

Mr. Berard stated he would like to give back to the community and being an engineer he feels this sub-committee offers him the best way to use his education and experience to help the town.

Councilor Ferguson motioned to accept 2009-033 as submitted, Councilor Dunford second.  
Voted – 8 Yes, 1 not present (Lavoie)

**2009-039** Reappointment Melanson Heath & Company, PC

Councilor Neale stated he has become very comfortable with the services provided by Melanson Heath & Co. He states they have proposed to freeze their rate at \$40,000 a year for three years.

Councilor Dunford stated, as a member of the Audit Committee, he felt Melanson Heath & Company did a very good job explaining the audit and all the questions they had. He feels they have always done a very good professional job.

Councilor Chatigny feels consistency in the accounting area with the finances would do the town well.

Councilor Sherwood asked Michael Basque for his opinion of Melanson Heath. He states he has been very pleased with their services, not only as an audit firm but also as an advisory firm.

Councilor Sherwood motioned to approve 2009-039 reappointment of Melanson Heath & Company for a term of 3 years, Councilor Ferguson second.

Voted – 8 Yes, 1 not present (Lavoie)

### **Second Readings**

**2009-027** A Request the Municipal Council vote to declare surplus Woodshop equipment from Amesbury High School – Mayor Kezer sponsor cont.

Councilor Neale read the recommendation of the Finance Committee to approve 2009-027.

Councilor Sherwood motioned to approve 2009-027 as submitted, Councilor McMilleon second.

Roll Call Vote – 8 Yes, 1 not present (Lavoie)

**2009-028** An Order to transfer \$80,000 from Refuse/Recycling to Veterans Benefits – Mayor Kezer sponsor cont.

Councilor Neale read the recommendation of the Finance Committee to approve 2009-028.

Councilor Ferguson motioned to approve 2009-028 as submitted, Councilor McMilleon second.

Roll Call Vote – 8 Yes, 1 not present (Lavoie)

**2009-029** An Order to transfer \$40,000 from Reserve for Unforeseen to Legal Services – Mayor Kezer sponsor cont.

Councilor Neale read the recommendation of the Finance Committee to approve.

Councilor Sherwood motioned to accept 2009-029 as submitted, Councilor Chatigny second.

Roll Call Vote – 8 Yes, 1 not present (Lavoie)

Recess 8:00 – 8:10

### **Public Hearings**

Councilor Ferguson motioned to take 2008-106 out of order, Councilor Chatigny second.

Voted Unanimous

**2008-106** Amend Zoning By-Law to create a priority development overlay district – Mayor Kezer sponsor cont.

President Benson read 2008-106 into the record.

Nipun Jain explained this by-law codifies all of the existing regulations in one place. It does not change the use or dimensional controls as they stand on those parcels. It is a procedural framework for applications filed for the 43D overlay district.

Councilor Sherwood stated this is very different from the Baileys Pond project. The important difference is that the town has control of the property in the Baileys Pond project. Bill 2008-106 is a permitting process for privately owned property that the town does not control. Having this expedited permitting in place will also allow the town to go after some of the Commonwealths energy related monies offered through the Green Communities Program. One of the requirements is to have a expedited permitting process in place.

Councilor Sherwood motioned to accept the recommendation of the Ordinance Committee to pass the amended zoning by-law 2008-106 creation of a priority district as amended, Councilor McMilleon second.

Roll Call Vote – 8 Yes, 1 not present (Lavoie)

**2008-061** A Request to accept Riverfront Drive and Cabot Court for Ownership by the Public as a Public Way – Mayor Kezer sponsor cont.

Mayor Kezer stated the developer met all the conditions set by the Planning Board and Design Review and fully complies with all the town standards for street acceptance.

Councilor Gilday read the recommendation of the Planning Board: The Board recommends that the documents as revised be considered for street acceptance by the Municipal Council provided the tree plan as presented by the applicant is completed by the developer in Spring 2009 to the satisfaction of the Board's consultant and the trees have been maintained for one growing season at the developer's expense.

Councilor Sherwood stated the information he received from the residents and the attorney representing the developer really argued that it was the intent of the Planning Board that the roads be accepted as public ways. After reading all the information provided to him and all the minutes from the Planning Board meetings he believes the intent of the Planning Board was that a subdivision be developed that meets subdivision standards by the Town of Amesbury. The standards are very explicit regarding roadways, setbacks, utility placement and curb cuts. He believes the intent of the Planning Board was neither to have these roads accepted or not accepted by the town, it was to make sure it met subdivision standards. He states in the subdivision bylaws it states that approval by the Planning Board of a subdivision plan does not constitute the acceptance by the town of any streets or sidewalks. If acceptance of streets were automatic out of intent, then why would the Municipal Council be involved? He wondered if the roads in Merrimac Landing were falsely represented to the people as being town owned. After reviewing all the information he received his question is. Given the financial burden that accepting a town way places on the town for the future maintenance and ongoing services what is the Municipal Councils rational to approve the roads rather than keeping them private.

Councilor McMilleon asked Nipun Jain if the Planning Board agrees that a street meets all the criteria to be accepted as a public, historically isn't that the normal procedure to follow? Nipun stated all subdivision roads that have been built and approved by the Planning Board in the past whether traditional or cluster has normally been accepted as public ways. Councilor McMilleon asked Councilor Sherwood if historically, all roads that have been built to standards been accepted why wouldn't we accept Merrimac Landing?

### **Public Comment**

Patrick Fernstrom, 4 Cabot Court. – Mr. Fernstrom responded to Councilor Sherwood concern that residents of Cabot Court were misrepresented in thinking the roads would be town owned. He stated the town was working with the developer and residents as if the roads would be accepted.

James Mitchell, Attorney for the Developer – Mr. Mitchell stated from the beginning the Developer had a relationship with the town to build the subdivision. He worked with all the various boards, commissions and town departments to come up with a development that worked for the town. He worked with the town to help solve an existing problem at Bartlett's Reach for an emergency access road. In return for building an emergency road to town standards the Developer wanted the Planning Board and town officials to recommend that the roads be accepted. He believes there is also a fairness issue. It would not be fair to expect the developer to spend an extra \$350,000 to bring the roads up to public standards and not accept them. In summary he believes there are two reasons to accept the road. It complies and meets the standards and was always was intended to be a public road. It is also a fairness issue to all the families living there to be on a public way.

Angus Bruce, the developer of Merrimack Landing – Mr. Bruce responded to Councilor Sherwood that he made no misrepresentations at any time.

President Benson closed the public hearing.

Councilor Neale agrees with Attorney Mitchell's fairness argument. If the town has taken the time to write standards and the developer builds to those standards he believes they have every right to expect that it will be accepted. He also states the town's rules for street acceptance are too ambiguous.

Councilor Sherwood states there should be a clearly articulated policy for these sorts of decisions not just historical precedence.

Councilor McMilleon agrees with the fairness issue. If a developer has complied with all the ordinances and was built to town standards he feels the town is obligated to accept it as a public way.

Councilor Lavoie feels the decision that was reached in the Planning Board process years ago was that the roads would be built to town standards and he is satisfied that all three roads should be accepted.

Councilor Dunford feels if the road was built to town standards and people believed the road was going to be accepted then the town should accept it.

Councilor Ferguson states she will be voting to accept all three streets. She would like the bylaw to be looked at the make sure it is more specific.

Councilor Sherwood moved to accept Riverfront Drive and Cabot Court, as heretofore laid out, including the easements, all as shown on a plan entitled "Street Acceptance Plan, Merrimack Landing Subdivision," dated January 5, 2009, revised through March 3, 2009, prepared by Jones and Beach Engineers, Inc., 85 Stratham Avenue, Portsmouth, MA; and to authorize the Mayor to acquire, by gift or otherwise, the fee interest in said Riverfront Drive and Cabot Court, as described above, upon such terms and conditions as the Mayor shall determine appropriate, for all purposes for which public ways are used in the City known as the Town of Amesbury, and the aforesaid easements; subject to the condition that the applicant, Merrimack Landing, LLC, complete the work as shown on the plan presented to the Planning Board, showing the trees within the development, in the spring of 2009, to the satisfaction of the Planning Board's consultant, and that the trees shall have been maintained for one growing season, failing which the applicant shall replace any trees which shall not survive one growing season, all at the applicant's expense. Councilor McMilleon second.

Roll Call Vote – 9 Yes

President Benson neglected to open the public comment on 2008-106. He opened it now for anyone who wished to speak. Hearing none he closed the public comment.

Councilor Lavoie reaffirmed the vote to accept as amended, Councilor McMilleon second.

Voted - Unanimous

**2009-022** A Request the Municipal Council vote to accept Riverview Heights for ownership by the public as a public way – Councilor Gilday sponsor cont.

President Benson read 2009-022 into the record and opened the public hearing.

Councilor Gilday read the recommendation of the Planning Board. The Board recommends that the documents as revised be considered for street acceptance by the Municipal Council provided the tree plan as presented by the applicant is completed by the developer in Spring 2009 to the satisfaction of the Board's consultant and the trees have been maintained for one growing season at the developer's expense.

Councilor Sherwood stated he will be voting in favor of 2009-022. Although the town does not usually accept a roadway going to condominiums these are different. The condominiums are really part of the subdivision and all the roads were built to subdivision standards.

Councilor Sherwood moved to accept Riverview Heights, as heretofore laid out, including the easements, all as shown on a plan entitled "Street Acceptance Plan, Merrimack Landing Subdivision," dated January 5, 2009, revised through March 3, 2009, prepared by Jones and Beach Engineers, Inc., 85 Stratham Avenue, Portsmouth, MA; and to authorize the Mayor to acquire, by gift or otherwise, the fee interest in said Riverview Heights, as described above, upon such terms and conditions as the Mayor shall determine appropriate, for all purposes for which public ways are used in the City known as the Town of Amesbury, subject to the condition that the applicant, Merrimack Landing, LLC, complete the work as shown on the plan presented to the Planning Board, showing the trees within the development, in the spring of 2009, to the satisfaction of the Planning Board's consultant, and that the trees shall have been maintained for one growing season, failing which the applicant shall replace any trees which shall not survive one growing season, all at the applicant's expense. Councilor McMilleon second.

Roll Call Vote – 9 Yes

Councilor Lavoie amended the motion on both 2008-061 and 2009-022 to correct the address for Jones and Beach Engineers, Inc. to read 85 Portsmouth Avenue, Stratham, NH, and to reaffirm the vote, Councilor Sherwood second. – Voted – Unanimous

### **First Readings**

**2009-034** A Request that the Municipal Council vote to accept a transfer of property by quitclaim deed for Lot 5 open space, 44 South Hampton Rd development – Mayor Kezer sponsor  
Councilor Ferguson motioned to refer 2009-034 to Finance Committee and Ordinance Committee, Councilor Neale second  
Voted - Unanimous

**2009-035** An Order to accept a \$2,200 donation from the Central Congregational Church – Mayor Kezer sponsor  
Councilor Ferguson motioned to send 2009-035 to Finance Committee for a public hearing, Councilor Neale – Voted Unanimous

### **Late Files**

**2009-040** An Ordinance to Establish the Minimum Requirements for Acceptance of Roadways as Public Ways – Councilor Lavoie sponsor  
Councilor Neale motioned to accept late file, Councilor McMilleon second. Voted – Unanimous

Councilor Sherwood motioned to refer 2009-040 to the Planning Board and Ordinance Committee and Town Council after the Ordinance recommendation Councilor Dunford second.

Voted – Unanimous

**2009-041** An Order to Amend Municipal Council Rules and Procedures – Councilor Lavoie sponsor

Councilor Neale motioned to accept as a late file, Councilor McMilleon second. Voted – Unanimous

Councilor Lavoie motioned to send 2009-041 to the Rules Committee, Councilor Sherwood second.

Voted – Unanimous

### **Correspondence**

**a. President/Vice President Communications**

**b. Communication from Elected Officials, Boards and Commissions**

**c. Council Communications, Announcements and Committee Reports**

Councilor McMilleon motioned to adjourn, Councilor Ferguson second.

Voted – Unanimous 9:40PM

Respectfully submitted,

Assistant Town Clerk